

STATE OF MAINE
SUPREME JUDICIAL COURT

20 1986

Docket No. BAR 85-99

BOARD OF OVERSEERS)
OF THE BAR)
v.)
LAWRENCE E. MERRILL)

OPINION AND ORDER

This is the first case to come before the Supreme Judicial Court pursuant to amendments to the Bar Rules adopted effective February 15, 1985. After hearing, the Grievance Commission determined pursuant to M. Bar R. 7(e)(4) that a complaint should be concluded by a public reprimand. Thereafter, Bar Counsel filed an information pursuant to M. Bar R. 7(e)(6)(C) and the record of proceedings pursuant to M. Bar R. 7(e)(6)(C)(i). The Court has reviewed the decision of the Grievance Commission to seek a reprimand upon the existing record pursuant to M. Bar R. 7(e)(6)(C)(iii). The findings of fact of the Commission are final unless clearly erroneous by virtue of M. Bar R. 7(e)(6)(C)(iv). See Board of Overseers v. Dineen, 481 A.2d 499, 502 (Me. 1984).

The Grievance Commission concluded that respondent had violated M. Bar. R. 3.6(a) by his failure to take reasonable measures to keep his client informed and by his neglect of a legal matter entrusted to him. The Commission's determination suggests factually that the "neglect" to which it referred consisted primarily of the respondent's failure to advise his client that the client had no valid claim. The respondent now admits that

his client was not kept informed. He claims, however, that the exercise of his best judgment as required by M. Bar R. 3.6(a) dictated that his client be left uninformed. The Court rejects this "best interests of the client" defense on the ground that the client remains in control of a legal matter even when he chooses a course that is not in his best interests. An attorney's choice, if he believes it necessary, is to withdraw.

The Commission also concluded that in the course of its investigation, the respondent misled Bar counsel and the Commission in violation of M. Bar R. 3.2(f)(3). The record is clear that an initial assertion made by respondent was admittedly contrary to fact. Although the Commission made no explicit determination whether the misrepresentation was deliberate or merely negligent, its conclusion that respondent had violated M. Bar R. 3.2(f)(3) is an implicit finding of deliberate conduct. As a factfinder, the Commission may reject the respondent's explanation. The Court cannot say that the Commission's determination is clearly erroneous.

Finally, the Commission decision to recommend a public reprimand was well within the discretion conferred by the 1985 Rules Amendments. The Amendments were intended to delegate to the Board of Overseers, acting through the Grievance Commission, the authority to impose discipline not involving suspension or disbarment. The Board's decision is subject to judicial review by this Court only for clear error or abuse of discretion. The

Court's review of the record discloses neither. The recommendation of the Commission is accepted.

The Executive Clerk of the Supreme Judicial Court is directed to make the following docket entry:

Decision of the Board of Overseers affirmed. Respondent Lawrence E. Merrill reprimanded for his conduct in violation of M. Bar R. 3.6(a) and 3.2(f)(3).

Dated: February 19, 1986



David G. Roberts
Associate Justice